

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

FRANK DEGIFICO, )  
Plaintiff )  
v. ) Civil No. 05-188-P-W  
TIME WARNER, et al., )  
Defendants )

**RECOMMENDED DECISION ON ORDER TO SHOW CAUSE**

On October 3, 2005, this Court issued an Order denying plaintiff's application to proceed *in forma pauperis* because it was not properly completed nor signed under penalty of perjury. Plaintiff was given until October 17, 2005, to submit a properly completed *in forma pauperis* application. On October 19, 2005 I recommended that the complaint be dismissed in its entirety for plaintiff's failure to file a properly completed application to proceed *in forma pauperis* or pay the \$250.00 filing fee. Objections to the recommendation were due in this court on November 7, 2005. On November 8, 2005, plaintiff filed a properly completed application to proceed *in forma pauperis* which the court granted, mooted my prior recommendation. On November 9, 2005 the clerk furnished plaintiff with the necessary service documents.

On January 31, 2006 the court issued an Order to Show Cause to plaintiff because more than 120 days had expired since he filed the complaint and service had not yet been made. Plaintiff has responded to the Order to Show Cause indicating "[t]he reason why I have not given summons to the defendants in this case, is due to changes and newfound information regarding (*sic*) the defendants in this particular case." He alleges, without

any supporting documentation or exhibits, that the defendants in this case seem to change addresses frequently, thereby "protecting their interests." It is apparent to me from these filings that Degifico has made no real attempt to effectuate service since he filed his complaint in September 2005. I do not find there is good cause shown for his failure to make service. Therefore I recommend that pursuant to the provisions of Rule 4(m) of the Federal Rules of Civil Procedure this court dismiss this complaint without prejudice.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1993) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Dated February 10, 2006

/s/ Margaret J. Kravchuk  
U.S. Magistrate Judge